CUSTOMS BULLETIN AND DECISIONS

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U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

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This issue contains:

U.S. Customs Service

T.D. 00-67, 00-68, 00-80

General Notices

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Parts 10 and 163

(T.D. 00-67)

RIN 1515-AC72

AFRICAN GROWTH AND OPPORTUNITY ACT AND GENERALIZED SYSTEM OF PREFERENCES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; corrections.

SUMMARY: This document makes corrections to the document published in the **Federal Register** as T.D. 00-67 which set forth interim amendments to the Customs Regulations primarily to implement the trade benefit provisions for sub-Saharan Africa contained in Title I of the Trade and Development Act of 2000, referred to as the African Growth and Opportunity Act.

DATES: These corrections are effective October 1, 2000; written comments must be submitted by December 4, 2000, in the manner prescribed in T.D. 00-67.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Office of Regulations and Rulings (202-927-1361).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On October 5, 2000, Customs published in the **Federal Register** (65 FR 59668) T.D. 00-67 to set forth interim amendments to the Customs Regulations primarily to implement the trade benefit provisions for sub-Saharan Africa contained in Title I of the Trade and Development Act of 2000. The trade benefits under Title I, also referred to as the African Growth and Opportunity Act (the AGOA), apply to sub-Saharan African countries designated by the President and involve: the extension of duty-free treatment under the Generalized System of Preferences (GSP) to non-textile articles normally excluded

from GSP duty-free treatment that are not import-sensitive; and the entry of specific textile and apparel articles free of duty and free of any quantitative limits. Those interim regulatory amendments took effect on October 1, 2000, to coincide with the effective date of the relevant statutory provisions.

This document makes the following corrections to the regulatory texts published in T.D. 00-67:

1. The definition of "assembled in one or more beneficiary countries" under § 10.212 includes a parenthetical specification of items (that is, thread, decorative embellishments, buttons, zippers, or similar components) that are not considered to be components for purposes of assembly under the text. However, Customs has reconsidered this matter and now believes that inclusion of this parenthetical limiting language, which is not mandated by the statute, was in error because in some contexts it may be inconsistent with applicable judicial precedent as regards what may be considered a component for assembly purposes. Accordingly, this parenthetical reference should be removed from the text of the definition.

2. The definition of "beneficiary country" under § 10.212 refers to a finding "by the President" that the country has satisfied the requirements of section 113 of the AGOA. However, that text does not reflect the fact that in Presidential Proclamation 7350 of October 2, 2000 (published in the **Federal Register** at 65 FR 59321 on October 4, 2000), which implemented the AGOA, the authority to make the finding regarding the requirements of section 113 was delegated to the United States Trade Representative. To ensure consistency with this delegation, the text of the definition should include a reference to a "designee" of the President.

3. Within § 10.213, paragraph (a)(9) requires some wording changes to conform more closely to the terms of corresponding subheading 9819.11.24 which was added to the HTSUS by the Annex to Presidential Proclamation 7350.

4. Finally, within § 10.213, in paragraph (a)(10), the words "or his designee" should be added after "the President" to cover any future delegation of authority by the President in this context.

CORRECTIONS OF PUBLICATION

Accordingly, the document published in the **Federal Register** as T.D. 00-67 on October 5, 2000 (65 FR 59668) is corrected as set forth below.

1. On page 59676, in the third column, in § 10.212, the definition of "assembled in one or more beneficiary countries" is corrected by removing the parenthetical phrase "(other than thread, decorative embellishments, buttons, zippers, or similar components)".

2. On page 59676, in the third column, in § 10.212, the definition of "beneficiary country" is corrected by adding the words "or his designee" after the words "finding by the President".

3. On page 59677, in the third column, in § 10.213, paragraph (a)(9)

is corrected to read:

(9) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabrics or yarn that the President or his designee has designated in the **Federal Register** as not available in commercial quantities in the United States;

4. On page 59677, in the third column, in § 10.213, the text of paragraph (a)(10) is corrected by adding the words "or his designee" after the words "the President".

Dated: November 3, 2000.

JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the **Federal Register**, November 9, 2000 (65 FR 67260)]

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19 CFR Parts 10 and 163

(T.D. 00-68)

RIN 1515-AC76

UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT AND CARIBBEAN BASIN INITIATIVE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; corrections.

SUMMARY: This document makes corrections to the document published in the Federal Register as T.D. 00-68 which set forth interim amendments to the Customs Regulations primarily to implement the trade benefit provisions for Caribbean Basin countries contained in Title II of the Trade and Development Act of 2000, referred to as the United States-Caribbean Basin Trade Partnership Act.

DATES: These corrections are effective October 1, 2000; written comments must be submitted by December 4, 2000, in the manner prescribed in T.D. 00-68.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Office of Regulations and Rulings (202-927-1361).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On October 5, 2000, Customs published in the **Federal Register** (65 FR 59650) T.D. 00-68 to set forth interim amendments to the Customs Regulations primarily to implement the trade benefit provisions for Caribbean Basin countries contained in Title II of the Trade and Development Act of 2000. The trade benefits under Title II, also referred to as the United States-Caribbean Basin Trade Partnership Act (the CBTPA), apply to Caribbean Basin countries designated by the President and involve the entry of specific textile and apparel articles free of duty and free of any quantitative restrictions, limitations, or consultation levels and the extension of NAFTA duty treatment standards to non-textile articles that are excluded from duty-free treatment under the Caribbean Basin Initiative (CBI) program. Those interim regulatory amendments took effect on October 1, 2000, to coincide with the effective date of the relevant statutory provisions.

This document rectifies some omissions and corrects some other errors published in T.D. 00-68. Two errors were in the preamble portion of the document and involved a misplacement of two numbers regarding the estimated information collection burden under the Paperwork Reduction Act. The remaining corrections set forth in this document involve the following aspects of the interim regulations:

1. The amendatory instruction for the authority citation to Part 10 should have stated that the general authority citation "is revised" (rather than "continues") to read as follows, because that general authority citation as set forth in T.D. 00-68 includes a change to reflect that General Note 20 of the Harmonized Tariff Schedule of the United States (HTSUS) was redesignated as General Note 22 in the Annex to Presidential Proclamation 7351 of October 2, 2000 (published in the **Federal Register** at 65 FR 59329 on October 4, 2000) which implemented the CBTPA.

2. In the first sentence of § 10.221, the word "Basin" was inadvertently omitted from the title of the CBTPA.

3. The definition of "assembled in one or more CBTPA beneficiary countries" under § 10.222 includes a parenthetical specification of items (that is, thread, decorative embellishments, buttons, zippers, or similar components) that are not considered to be components for purposes of assembly under the text. However, Customs has reconsidered this matter and now believes that inclusion of this parenthetical limiting language, which is not mandated by the statute, was in error because in some contexts it may be inconsistent with applicable judicial precedent as regards what may be considered a component for assembly purposes. Accordingly, this parenthetical reference should be removed from the text of the definition.

4. The definition of "CBTPA beneficiary country" under § 10.222 refers to a beneficiary country designated by the President but does not refer to the additional statutory requirement that the President determine whether a designated beneficiary country has satisfied the

requirements of 19 U.S.C. 2703(b)(4)(A)(ii) (the authority for making that determination was delegated to the United States Trade Representative (USTR) in Presidential Proclamation 7351). Since the determination regarding the requirements of 19 U.S.C. 2703(b)(4)(A)(ii) is a necessary condition of eligibility for the CBTPA trade benefits for each beneficiary country and thus operates as a condition precedent to application of the implementing regulations, the definition must be corrected to reflect this additional statutory requirement.

5. Within § 10.223, paragraph (a)(4) requires some wording changes to conform more closely to the terms of corresponding subheading 9820.11.09 which was added to the HTSUS by the Annex to Presidential Proclamation 7351.

6. Within § 10.223, paragraph (a)(8) requires some wording changes to conform more closely to the terms of corresponding subheading 9820.11.27 which was added to the HTSUS by the Annex to Presidential Proclamation 7351.

7. Within § 10.223, in paragraph (a)(9), the words "or his designee" should be added after "the President" to cover any future delegation of authority by the President in this context.

8. Within § 10.223, the words "in a CBTPA beneficiary country" need to be added after the word "assembled" in paragraph (a)(11) to reflect the wording of corresponding subheading 9820.11.21 which was added to the HTSUS by the Annex to Presidential Proclamation 7351.

9. Within § 10.223, paragraph (a)(12) describes certain knitted or crocheted apparel articles and was included to reflect the terms of subheading 9820.11.18 which was added to the HTSUS by the Annex to Presidential Proclamation 7351. The word "wholly" appears in the regulatory text before the word "assembled" but is not included in the text of the HTSUS subheading. In addition, the regulatory text includes, after the words "assembled in one or more CBTPA beneficiary countries," the words "or the United States" which do not appear in the HTSUS subheading text. Accordingly, the words "wholly" and "or the United States" must be removed from the regulatory text to ensure conformity with the HTSUS subheading text.

10. Also with regard to paragraph (a)(12) of § 10.223, appropriate and necessary references to that provision were inadvertently omitted from the following regulatory provisions:

a. In paragraph (b)(1)(i)(A) of § 10.223, which concerns the special rule for foreign findings and trimmings, the sewing thread exception at the end must include a reference to paragraph (a)(12) in addition to the reference to paragraph (a)(3) because both provisions refer to "thread formed in the United States."

b. In paragraph (b)(1)(i)(D) of § 10.223, which concerns the *de minimis* rule for fibers and yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries, the exception for elastomeric yarns (which must be wholly formed in the United States) must include a reference to paragraph (a)(12) in addition to the reference to paragraphs (a)(1) through (a)(5) because all of those provi-

sions refer to "yarns wholly formed in the United States."

c. In paragraph (b)(2) of § 10.223, which concerns the special rule for nylon filament yarn, reference is made to an article otherwise described under "paragraph (a)(1), (a)(2) or (a)(3) of this section," because those three regulatory provisions correspond to the two statutory provisions (that is, "clause (i) or (ii)" of 19 U.S.C. 2703(b)(2)(A)) referred to in the statutory nylon filament yarn provision (that is, 19 U.S.C. 2703(b)(2)(A)(vii)(IV)). It is noted that the nylon filament yarn rule is also reflected in U.S. Note 3(d) to new Subchapter XX of Chapter 98 of the HTSUS as added by the Annex to Presidential Proclamation 7351. Since that U.S. Note 3(d) also includes a reference to HTSUS subheading 9820.11.18, a reference to paragraph (a)(12) should be added to paragraph (b)(2) of § 10.223.

d. Finally, the second sentence of paragraph (a) of § 10.225, which concerns the filing of claims for preferential treatment, refers to articles described in paragraphs (a)(1) through (a)(11) and thus requires the addition of a reference to paragraph (a)(12) to be complete.

11. In the Textile Certificate of Origin set forth under paragraph (b) of § 10.224, the reference to Caribbean yarn must be removed from block 7 because the statutory and regulatory texts do not mention Caribbean yarn, and the description of preference group D must be corrected to conform more closely to the wording of paragraph (a)(4) of § 10.223 as corrected in this document. The complete Certificate incorporating these corrections is set forth in this document.

12. As in the case of § 10.221 mentioned above, the word "Basin" was inadvertently omitted from the title of the CBTPA in the first sentence of § 10.231.

13. Finally, for the same reasons stated above in the case of § 10.222, the definition of "CBTPA beneficiary country" under § 10.232 must be corrected to reflect the additional statutory requirement under 19 U.S.C. 2703(b)(4)(A)(ii).

CORRECTIONS OF PUBLICATION

Accordingly, the document published in the **Federal Register** as T.D. 00-68 on October 5, 2000 (65 FR 59650) is corrected as set forth below.

Corrections to the Preamble

1. On page 59657, in the second column, in the second line the number "440" is corrected to read "42" and in the fourth line the number "42" is corrected to read "440".

Corrections to the Interim Regulations

2. On page 59657, in the third column, in the amendatory language pertaining to the authority citation for Part 10 the word "continues" is corrected to read "is revised".

3. On page 59658, in the third column, in § 10.221, the first sentence is corrected by adding the word "Basin" between the words "Caribbean" and "Trade".

4. On page 59658, in the third column, in § 10.222, the definition of "assembled in one or more CBTPA beneficiary countries" is corrected by removing the parenthetical phrase "(other than thread, decorative

embellishments, buttons, zippers, or similar components)".

5. On page 59658, in the third column, in § 10.222, the definition of "CBTPA beneficiary country" is corrected to read:

CBTPA beneficiary country. "CBTPA beneficiary country" means a "beneficiary country" as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential treatment of textile and apparel articles under 19 U.S.C. 2703(b)(2) and which has been the subject of a finding by the President or his designee, published in the **Federal Register**, that the beneficiary country has satisfied the requirements of 19 U.S.C. 2703(b)(4)(A)(ii).

6. On page 59659, in the second column, in § 10.223, paragraph (a)(4) is corrected to read:

(4) Apparel articles (other than socks provided for in heading 6115 of the HTSUS) knit to shape in a CBTPA beneficiary country from yarns wholly formed in the United States, and knitted or crocheted apparel articles (other than non-underwear t-shirts) cut and wholly assembled in one or more CBTPA beneficiary countries from fabrics formed in one or more CBTPA beneficiary countries or in one or more CBTPA beneficiary countries and the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more CBTPA beneficiary countries);

7. On page 59659, in the third column, in § 10.223, paragraph (a)(8) is corrected to read:

(8) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics or yarn that the President or his designee has designated in the **Federal Register** as not available in commercial quantities in the United States;

8. On page 59659, in the third column, in § 10.223, the text of paragraph (a)(9) is corrected by adding the words "or his designee" after the words "the President";

9. On page 59659, in the third column, in § 10.223, the text of paragraph (a)(11) is corrected by adding the words "in a CBTPA beneficiary country" after the word "assembled".

10. On page 59660, in the first column, in § 10.223, the text of paragraph (a)(12) is corrected by removing the word "wholly" before the word "assembled" and by removing the words "or the United States" after the word "countries".

11. On page 59660, in the first column, in § 10.223, the text of paragraph (b)(1)(i)(A) is corrected by adding the reference "or (a)(12)" after the reference "paragraph (a)(3)".

12. On page 59660, in the second column, in § 10.223, the text of paragraph (b)(1)(i)(D) is corrected by adding the reference "or (a)(12)" after the reference "paragraph (a)(1) through (a)(5)".

13. On page 59660, in the second column, in § 10.223, the text of paragraph (b)(2) is corrected by removing the reference "paragraph

(a)(1), (a)(2) or (a)(3)" and adding, in its place, the reference "paragraph (a)(1), (a)(2), (a)(3) or (a)(12)".

14. On page 59661, in § 10.224, the Textile Certificate of Origin under paragraph (b) is corrected to read:

Caribbean Basin Trade Partnership Act
Textile Certificate of Origin

1. Exporter Name & Address		2. Producer Name & Address
3. Importer Name & Address		6. U.S./Caribbean Fabric Producer Name & Address
4. Description of Article	5. Preference Group	7. U.S. Yarn Producer Name & Address
		8. U.S. Thread Producer Name & Address
		9. Name of Handloomed, Handmade, or Folklore Article
10. Name of Preference Group G Fabric or Yarn:		

Preference Groups:

A: Apparel assembled from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.223(a)(1)].
B: Apparel assembled and further processed from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.223(a)(2)].
C: Non-knit apparel cut and assembled from U.S. fabric from U.S. yarn and thread. [19 CFR 10.223(a)(3)].
D: Apparel knit to shape from U.S. yarn and knitted or crocheted apparel cut and assembled from regional or regional and U.S. fabrics from U.S. yarn [19 CFR 10.223(a)(4)].
E: Non-underwear t-shirts made of regional fabric from U.S. yarn [19 CFR 10.223(a)(5)].
F: Brassieres cut and assembled in the United States and/or one or more CBTPA beneficiary countries [19 CFR 10.223(a)(6)].
G: Apparel cut and assembled in one or more CBTPA beneficiary countries from fabrics or yarn not formed in the United States or one or more CBTPA beneficiary countries (as identified in NAFTA) or designated as not available in commercial quantities in the United States [19 CFR 10.223(a)(7) or (a)(8)].
H: Handloomed, handmade, or folklore articles [19 CFR 10.223(a)(9)].
I: Luggage assembled from U.S.-formed and cut fabric from U.S. yarn. [19 CFR 10.223(a)(10)].
J: Luggage cut and assembled from U.S. fabric from U.S. yarn [19 CFR 10.223(a)(11)].
K: Knitted or crocheted apparel cut and assembled from U.S. fabric from U.S. yarn and thread. [19 CFR 10.223(a)(12)].

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document.
I agree to maintain, and present upon request, documentation necessary to support this certificate.

12. Authorized Signature		13. Company
14. Name (Print or Type)		15. Title
16a. Date(DD/MM/YY)	16b. Blanket Period From: To:	17. Telephone Number Facsimile Number

15. On page 59662, in the second column, in § 10.225, the second sentence of paragraph (a) is corrected by removing the reference "§ 10.223(a)(2) through (a)(9) and (a)(11)" and adding, in its place, the reference "§ 10.223(a)(2) through (a)(9), (a)(11) or (a)(12)".

16. On page 59663, in the third column, in § 10.231, the first sentence is corrected by adding the word "Basin" between the words "Caribbean" and "Trade".

17. On page 59663, in the third column, in § 10.232, the definition of "CBTPA beneficiary country" is corrected to read:

CBTPA beneficiary country. "CBTPA beneficiary country" means a "beneficiary country" as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential duty treatment of articles under 19 U.S.C. 2703(b)(3) and which has been the subject of a finding by the President or his designee, published in the **Federal Register**, that the beneficiary country has satisfied the requirements of 19 U.S.C. 2703(b)(4)(A)(ii).

Dated: November 3, 2000.

JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the **Federal Register**, November 9, 2000 (65 FR 67260)]

(T.D. 00-80)

SYNOPSIS OF DRAWBACK RULING

The following are synopses of a drawback rulings issued August 1, 1996, to June 27, 1997, inclusive, pursuant to Subparts J, Part 191, Customs Regulations.

In the synopsis below is listed for the drawback ruling approved under 19 U.S.C. 1313(d), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the date the application was signed, the Port Director to whom the ruling was forwarded, and the date on which it was approved.

Dated: November 7, 2000.

WILLIAM G. ROSOFF,
(for John Durant, Director,
Commercial Rulings Division.)

(A) Company: **Boericke & Tafel, Inc.**
Articles: Medicines
Merchandise: Domestic tax-paid ethyl alcohol (190 proof)
Proposal signed: April 29, 1996
Ruling forwarded to PD of Customs: San Francisco, August 1, 1996
Ruling: 46-00012-000

(B) Company: **Virginia Dare Extract Co., Inc.**
Articles: Flavoring extracts
Merchandise: Domestic tax-paid ethyl alcohol (190 proof)
Proposal signed: April 2, 1997
Ruling forwarded to PD of Customs: New York, June 27, 1997
Ruling: 44-00013-000

U.S. Customs Service

November 8, 2000

Department of the Treasury
Office of the Commissioner of Customs
Washington, D.C.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

U.S. Customs Service

General Notice

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT REGARDING NAFTA ELIGIBILITY OF "BACKFLEX COVER & BELT CLIP"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the proposed modification of ruling letter and revocation of treatment relating to the "Backflex Cover & Belt Clip" as it relates to the status of this product under the North American Free Trade Agreement (NAFTA).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter relating to the eligibility of the "Backflex Cover & Belt Clip" under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before December 22, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Classification Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, at (202) 927-2380.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-

182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the NAFTA eligibility of the "Backflex Cover Belt & Belt Clip". Although in this notice, Customs is specifically referring to one ruling, New York Ruling (NY) E88017, dated October 15, 1999, this notice covers any ruling on this merchandise, which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as emended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. Any importer's failure to advice Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final notice.

In NY E88017, Customs ruled that the merchandise did not qualify for preferential treatment under the NAFTA because the materials

used in the production of the goods would not undergo the change in tariff classification required by General Note 12(t)/63, HTSUSA. This ruling letter is set forth as "Attachment A" to this document. Since the issuance of this ruling, Customs has reviewed the NAFTA eligibility of this merchandise and has determined that the cited ruling is in error. We have determined that this item was properly classified under subheading 6307.90.9989, HTSUS. However, the merchandise does qualify for preferential treatment under the NAFTA because General Note 12(t), Chapter Rule 1 to Chapter 63, states that "For the purposes of determining origin of a good of this chapter, the rule applicable to that good shall only apply to the component that determines tariff classification of the good...". In the case of the subject merchandise, "Backflex Cover & Belt Clip", it is the fabric which forms the textile pouch which determined that the product should be classified under a textile provision, subheading 6307.90.9989, HTSUS. Inasmuch as the fabric is wholly formed in the United States, it is our decision that the subject good is a NAFTA originating good under General Note 12(b), HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY E88017, dated October 15, 1999, and any other ruling not specifically identified, to reflect the proper NAFTA status of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter HQ 964313 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action consideration will be given to any written comments timely received.

Dated: November 2, 2000.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

October 15, 1999
CLA-2-63:RR:NC:TA:352 E88017
Category: Classification
Tariff No.: 6307.90.9989

MR. S. GARY KILLEEN
JUST IN TIME ENT.
20268 54th Ave.
Langley, B.C. Canada V3A 3W3

Re: The Tariff classification and status under the North American Free Trade Agreement (NAFTA), of a "Backflex Cover and Belt Clip" from Canada; Article 509.

DEAR MR. KILLEEN:

In your letter dated September 20, 1999, you requested a ruling on the status of a "Backflex Cover and Belt Clip" from Canada under the NAFTA.

The sample submitted is a "Backflex Cover with a Belt Clip" which is used for holding in place flexible magnet pads. The cover is made of two textile fabric panels. The exterior panel is constructed of brushed knit fabric laminated with foam. The interior is composed of a knit fabric panel. The panels are sewn together to form the cover. The edges are finished off with interlock stitches. The metal clip is not permanently attached to the cover; it features onto the back portion a strip similar to the VELCRO brand fastener. When the clip is hooked unto a waistband the strip side faces outward toward the person's body so that the cover can be attached.

The applicable tariff provision for the "Backflex Cover with a Belt Clip" will be 6307.90.9989, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for other made up articles... Other. The general rate of duty will be 7 percent *ad valorem*.

The merchandise does not qualify for preferential treatment under the NAFTA because the materials used in the production of the goods will not undergo the change in tariff classification required by General Note 12(t)/63, HTSUSA.

In addition, the "Backflex Cover with Belt Clip" may be subject to a reduced rate of duty based upon the Tariff Preference Levels (TPL) established in Section XI, Additional U.S. Note 4 (a), up to the annual quantities specified in subdivision (c) of Note 4. Upon completion of the required documentation and up to the specified annual quantities, the "Backflex Cover with Belt Clip" may be eligible for a free preferential rate.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alan Tytelman at 212-637-7092.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Headquarters, U.S. Customs Service, 1300 Pennsylvania Ave. N.W., Washington, D.C. 20229.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACTMENT B]

CLA-2 RR:CR:TE 964313 ASM
Category: Classification
Tariff No.: 6307.90.9989

S. GARY KILLEEN
#207-5558-208th St.
Langley, B.C. V3A 2K3
Canada

Re: Modification of NY E88017: NAFTA eligibility of "Backflex Cover & Belt Clip."

DEAR MR. KILLEEN:

This is in regard to New York Ruling (NY) E88017 issued to you on October 15, 1999, which involved the classification of the "Backflex Cover & Belt Clip" under the Harmonized Tariff Schedule of the United States Annotated and the status of this product under the North American Free Trade Agreement (NAFTA). A sample was submitted to this office for examination. We have reviewed this ruling and determined that the decision regarding NAFTA eligibility is incorrect. This ruling modifies NY E88017 by providing a correct determination with respect to the good's NAFTA status.

Facts:

The subject item is identified as the "Backflex Cover & Belt Clip" and is used for holding flexible magnets against the body for the purpose of relieving pain. The cover is essentially a pocket constructed by sewing two panels of laminated fabric. The laminated fabric features three-layer construction with nylon knit pile fabric on the outer surface, a core of polyester cellular plastic in the center and a backing fabric of nylon warp knit fabric. This product, which measures approximately 8 inches by 6.5 inches, tapers slightly from bottom to top and has had its edges finished by overlock stitching. A metal clip is attached to the cover by a textile fabric hook fastener (a "Velcro"™ fastener) which engages with the loops of the out knit pile fabric. The "Velcro"™ fastener is riveted to the metal clip and is supported by a strip of plastic in the form of a rectangular shape. The metal clip is used to fasten the cover to a belt and hold the cover close to the wearer's body to maximize the effect of the magnetic field.

Based on the certificates or origin that you submitted with this request, it appears that the laminated fabric forming the cover and stainless steel belt clip are both wholly manufactured in the United States with a preference criteria of "A". It is not clear from the documentation what foreign components are used in the manufacture of a strip of woven pile fabric glued to a plastic rectangular piece. You indicate that the "Velcro"™ hook fastener attached to the plastic support piece is manufactured in Canada, however, the certificate of origin indicates that this item incorporates foreign components and has been designated a preference criterion of "B". The metal rivets attaching the "Velcro"™ and plastic support to the metal clip are described as "brass eyelets" and certified by the owner of the company to be in compliance with the origin requirements of NAFTA. Finally, you state that the raw yarn for the thread used to sew the panels of fabric together is manufactured in China but is converted, colored and woven in Montreal, Canada, and constitutes less than 1/4 of 1 percent of the subject product.

In NY E88017 dated, October 15, 1999, the subject item was classified in subheading 6307.90.9989, HTSUSA, which is dutiable under the general column one rate of 7 percent *ad valorem*. In addition, the ruling determined that the merchandise did not qualify for preferential treatment under the NAFTA because the materials used in the production of the goods will not undergo the change in tariff classification required by General Note 12(t)63, HTSUSA. You disagree with the determination that the article is not eligible for reduced duties under the NAFTA. You claim that the only foreign component used in the manufacture of this item is the sewing thread used to sew the cover together and that this thread should be ignored for the purposes of determining NAFTA eligibility since the thread represents less than 7 percent of the weight of the good and therefore is *de minimis* by application of Section 102.13 of the Customs Regulations.

Issue:

1. What is the proper tariff classification and duty rate for the subject merchandise?
2. Is the subject merchandise eligible for duty free treatment under the NAFTA?

Law and Analysis:

TARIFF CLASSIFICATION

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN, although not dispositive, are used to determine the proper interpretation of the HTSUSA by providing a commentary on the scope of each heading of the HTSUSA. *See*, T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The determination of NAFTA eligibility is dependent, in part, on the tariff classification of the item. As such, we must first classify the item under the HTSUSA. The "Backflex Cover & Belt Clip" is comprised to two detachable pieces which are constructed of different materials, *i.e.*, textile and metal. The textile pouch, taken separately, would be classified in subheading 6307.90.9989, HTSUSA, which is the textile provision for "Other made up articles" and the metal clip would be classified in subheading 8308.90.9000, HTSUSA, which provides for articles of base metal such as "Clasps, ... hooks." GRI 2(b) governs the classification of goods when there are mixtures and combinations of materials or substances, and when goods consist of two or more materials or substances. In relevant part, GRI 2(b) states that "The classification of goods consisting or more than one material or substance shall be according to the principles of rule 3." GRI 3 states:

> (a). The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b). Mixtures, composite goods consisting of different materials or made up of different components and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

In this case, the applicable headings, 6307 and 8308, each refer to only part of the materials which make up this product. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) as if they consisted of the material or component that gives them their essential character. The EN to GRI 3(b) states:

> (VII). In all these cases the goods are to be classified as if they consisted of the material or component **which give them their essential character,** insofar as this criterion is applicable.
>
> (VIII). The factor which determines the essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Explanatory Note (IX), for the General Rule of Interpretation 3(b) provides, in

relevant part, that a composite of two separable articles must together form a whole which would not normally be sold in separate parts. In this instance, the textile pouch can be characterized as having a "separable component", *i.e.*, the metal clip used to attach the entire unit to a belt or waistband. Clearly, these components function as a whole in that they are designed to be used together to hold a magnet close to the body of the user. These components would not fulfill their intended function if sold separately.

Recently, there have been several Court decisions on "essential character" for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See*, *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed 119 F. 3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co., v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). *See also*, *Pillowtex Corp. v. United States*, F. Supp. 188 (CIT 1997), affirmed CAFC No. 98-1227 (March 16, 1999).

The essential character of this composite good can be determined by comparing each component as it relates to the use of the product. The "Backflex Cover & Belt Clip" is used for holding in place flexible magnet pads. Although the metal clip provides the added feature of allowing the user to secure the product to a belt or waistband, it is the textile pouch, which actually contains the therapeutic magnet. In that sense, the textile pouch provides the essential character because it more directly serves the main goal of the product, *i.e.*, to carry the magnet which provides pain relief to the user. In Headquarter's Ruling (HQ) 957182, dated March 6, 1995, Customs classified a "body pad/back warmer" which was imported without its heating pack, as an "Other made up article" under subheading 6307.90.9989, HTSUSA. This article consisted of a textile pouch with a belt mechanism to secure it to the body. Like the textile pouch in the subject case, the "body pad/back warmer" textile pouch was specifically designed to hold a separate energy element designed to provide relief to the user; it also features a distinct attachment feature (belt mechanism) which is similar to the detachable metal clip of the "Backflex Cover & Belt Clip." In view of these similarities, this ruling serves as precedent in finding that the subject textile pouch is properly classified as "Other made up articles" in heading 6307, HTSUSA.

Based on the foregoing, it is our determination that the "Backflex Cover & Belt Clip" is classified pursuant to GRI 3(b), as "composite goods", under subheading 6307.90.9989, HTSUSA, which is the provision for "Other made up articles including dress patterns: Other: Other: Other, Other: Other." This provision is dutiable under the general column one rate at 7 percent *ad valorem*.

NAFTA ELIGIBILITY

The subject article, "Backflex Cover & Belt Clip", undergoes processing operations in Canada and incorporates materials produced in the United States. Both the United States and Canada are countries provided for under the North American Free Trade Agreement (NAFTA). General Note 12, HTSUSA, incorporates Article 401 of the NAFTA into the HTSUSA. Note 12(a) provides, in pertinent part:

* * *

(ii) Goods that **originate** in the territory of a NAFTA party under subdivision (b) of this note **and that qualify to be marked as goods of Canada** under the terms of the marking rules... and are entered under a subheading for which a rate of duty appears in the "Special" subcolumn followed by the symbol "CA" in parentheses, are eligible for such duty rate... . [Emphasis supplied]

In order to be eligible for the "Special" "CA" rate of duty, the merchandise must be NAFTA originating goods under General Note 12(b), HTSUSA, and qualify to be marked as goods of Canada. Note 12(b) provides in pertinent part,

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as ***"goods orginating in the territory of a NAFTA party"*** only if–

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that–

(A) except as provided in subdivision (f) of this note, each of the non-orginating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or,

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s), (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials; or...

* * *

In applying the NAFTA Rules of Origin, it is important to note that the aforementioned rules are not sequential. General Note 12(b)(ii)(A) is used when there are some foreign materials involved in the product. Thus, the subject merchandise qualifies for NAFTA treatment only if the provisions of General Note 12 (b)(ii)(A) are met, that is, if the merchandise is transformed in the territory of Canada so that the non originating materials (foreign thread) undergo a change in tariff classification as described in subdivision (t) or satisfies the rules set forth in subdivisions (r), (s), and (t) of this note.

General Note 12(t), Chapter 63, rule 4, states as follows:

4. A change to heading 6304 through 6310 from any other chapter, **except** from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, **chapters 54** through 55 or headings 5801 through 5802 or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties. (Emphasis supplied)

It is our understanding that the foreign thread used to construct the textile pouch is of synthetic fiber and would thus be classifiable as "sewing thread" at subheading 5401.10.0000, HTSUSA. Inasmuch as the textile pouch is classifiable in subheading 6307.90.9989, HTSUSA, and General Note 12(t), Chapter 63, specifically states that sewing thread of Chapter 54 is excepted by subdivision (t), Chapter 63, Rule 4, it is our determination that the subject thread does not undergo the requisite change in tariff classification.

You have asserted that application of the *de minimis* rule (General Note 12(f)) would qualify the merchandise for NAFTA treatment because the foreign thread constitutes less than seven percent of the total weight of the good. However, the *de minimis* rule is not applicable in this case.

We have already determined that the "Backflex Cover & Belt Clip" is classifiable in a textile provision, subheading 6307.90, HTSUSA. As such, General Note 12(t), Chapter rule 1 to Chapter 63 is applicable and states:

For the purpose of determining origin of a good of this chapter, the rule applicable to that good shall only apply to the component that determines

tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for the good.

In HQ 959863, dated October 31, 1996, it was the fabric of a cloth covered hanger, comprised of a wooden hanger, foam padding, and fabric, that caused the article to be classified in a textile provision at subheading, 6307.90, HTSUSA. In determining whether or not the good was NAFTA originating, it was necessary to consider the fact that the fabric had determined the tariff classification (General Note 12(t), Chapter rule 1 to Chapter 63). This resulted in the good being denied the NAFTA preference because the fabric was foreign.

In applying General Note 12(t), Chapter Rule 1 to Chapter 63, to the instant case, it is the fabric, not the thread of the textile pouch that determines tariff classification of this article under a textile provision, subheading 6307.90.9989, HTSUSA. Thus, in determining whether or not the good is NFATA originating, it would be the fabric and not the thread that would be subject to a *de minimis* analysis. However, we do not need to apply the *de minimis* rule because the fabric forming the textile pouch is wholly formed in the United States. As such, the fabric determines origin of the good and based on the foregoing, it is our determination that the subject merchandise is a NAFTA originating good under General Note 12(b), HTSUSA. NY E88017 was incorrect in determining that the merchandise did not qualify for preferential treatment under the NAFTA.

Holding:

NY E88017, dated October 15, 1999, is hereby modified.

The subject merchandise is correctly classified in subheading 6307.90.9989, HTSUSA, which provides for, "Other made up articles including dress patterns: Other: Other: Other, Other: Other." There is no textile restraint category.

The product does qualify for the "Special" "CA" duty free treatment under the NAFTA.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, we suggest that your client check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) categories, your client should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 C.F.R. Sections 177.9(b)(1) and 181.100(a)(2)(i). These sections state that a ruling letter is issued on the assumption that all of the information furnished in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

Should it be subsequently determined that the information furnished is not complete and does not comply with 19 C.F.R. Sections 177.9(b)(1) and 181.100(a)(2)(i), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to customs, it is recommended that a new ruling requested be submitted in accordance with 19 C.F.R. Section 177.2 and/or Section 181.93.

JOHN DURANT,
Director,
Commercial Rulings Division.

19 CFR Part 177

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF MOTOR VEHICLE SUSPENSION BALL JOINTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of certain projectors.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of motor vehicle suspension ball joints under the Harmonized Tariff Schedule of the United States ("HTSUS") and any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on October 4, 2000. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927-2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, col-

lect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on October 4, 2000, proposing to revoke a ruling letter pertaining to the tariff classification of motor vehicle suspension ball joints. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY 818205 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964496. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 964496, revoking NY 818205 is set forth as an Attachment to this document.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: November 6, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

November 6, 2000
CLA-2 RR:CR:GC 964496 GOB
Category: Classification
Tariff No.: 8708.99.70

THOMAS P. SPROWL
NIPPON EXPRESS U.S.A., INC.
1413 Donaldson Pike
Nashville, TN 37210

Re: Motor vehicle suspension ball joints; NY 818205 revoked.

DEAR MR. SPROWL:

This ruling letter is in regard to New York Ruling Letter ("NY") 818205, issued to Nippon Express U.S.A., Inc. by the Customs National Commodity Specialist Division, New York, on February 8, 1996. In that ruling, a suspension ball joint for use in motor vehicles was classified under subheading 8708.99.73, Harmonized Tariff Schedule of the United States ("HTSUS"). We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Facts:

The motor vehicle suspension ball joint part numbers are 40160-88M02 and 40160-50Y02.

The suspension ball joint is placed between the suspension arm and the steering knuckle. The socket is pressed into the suspension arm, and the ball stud is fitted to the steering knuckle using the bolt and nut. The ball stud is then fastened with a nut. This ball joint fastens the steering knuckle (tire) and the suspension arm, enabling rocking and sliding in such a manner that the twist force caused by tire motion (cornering and up-and-down movement) does not propagate to the suspension arm and other components.

When the vehicle is cornering, the ball stud slides with the cornering of the tire, and the proper cornering angle between the tire and the suspension arm can be obtained by smoothly moving the tire. The ball joint is on the rotational center of the tire.

In the case of a double wishbone type of suspension, the upper or lower ball joint also has the role of suspending the body.

Issue:

What is the tariff classification of the subject motor vehicle suspension ball joints?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80.

The HTSUS provisions under consideration are as follows:

8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:			
	Other parts and accessories:			
8708.99		Other		
			Other	
				Other
8708.99.70				Parts for suspension systems
8708.99.73				Parts for steering systems

The subject motor vehicle suspension ball joints are clearly parts of the suspension system of a motor vehicle.

Accordingly, they are classified in subheading 8708.99.70, HTSUS.

Holding:

The subject motor vehicle suspension ball joints are classified in subheading 8708.99.70, HTSUS.

Effect on Other Rulings:

NY 818205 is revoked.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

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19 CFR Part 177

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF IB-367

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to the classification of IB-367.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of IB-367 and is revoking any treatment previously accorded by the Customs Service to substantially identical transactions under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on September 27, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 39. As discussed in this document, one comment was received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 927-2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, Customs published a notice on September 27, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 39, proposing to revoke New York ruling (NY) F82445, dated February 22, 2000, and to revoke any treatment accorded to substantially identical merchandise. One comment was received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Cus-

toms previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUSA. *See*, T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

In NY F82445, Customs ruled that IB-367 was classified in subheading 2941.90.30, HTSUS, as an "other antibiotic." It is now Customs position that this substance is not correctly classified in heading 2941, HTSUS, because it is not an antibiotic. To be classifiable in heading 2941, HTSUS, a substance must be one of the types of "substances secreted by living micro-organisms which have the effect of killing other micro-organisms or inhibiting their growth," or be in a class of "synthetic products closely related to natural antibiotics and used as such." EN 29.41. IB-367 was originally synthesized from porcine leukocytes, a type of mammalian cell. Hence, while IB-367 is a synthetic product used to kill microorganisms, it is not "closely related to natural antibiotics," in the sense that it is not originally secreted by living micro-organisms.

The commenter quotes "such key reference works as *Zinsser's Microbiology*, and the *Oxford English Dictionary*" which "define 'antibiotic' in the wider sense as a chemical compound derived from a *living organism* (not just a micro-organism) that is capable of inhibiting or killing micro-organisms." Zinsser is copyrighted in 1968 and the Oxford English Dictionary (OED) second edition in 1989. Since the ENs were issued in 1989, we presume commenter's proffered definition was rejected by the drafters of the ENs, which clearly state that antibiotics are substances secreted by "living *micro*-organisms." Also, it is not clear that the Zinsser and OED definitions refer to leukocytes as "living organisms." An organism is defined as "a plant or animal." Webster's II New College Dictionary, 772 (Houghton Mifflin Company, 1999). Protegrins are not derived from an animal *per se*. They are derived from the white cells in the animal's blood.

The commenter also submits numerous articles on the development of protegrin based antimicrobial substances. We note a structural difference between the protegrin substances and antibiotics of heading 2941, HTSUS. Protegrins contain disulfide bridges between cystein pairs and the polypeptide antibiotics of heading 2941, HTSUS, do not. Commenter argues that these bridges are not necessary to

the antimicrobial activity exhibited by protegrins. This statement is irrelevant to the classification decision. In fact, the structure of the substance is distinctly different from substances classified in heading 2941, HTSUS.

Customs, pursuant to section 625(c)(1), is revoking NY F82445 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling letters (HQ) 964401 set forth as an attachment to this document. Additionally, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: November 7, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

November 7, 2000
CLA-2 RR:CR:GC 964401 AM
Category: Classification
Tariff No.: 2934.90.30

MR. MATTHEW J. MCCONKEY
ARENT FOX KINTNER PLOTKIN & KAHN, PLLC
1050 Connecticut Ave., N. W.
Washington, DC 20036-5339

Re: NY F82445 revoked; IB-367 imported in bulk form.

DEAR MR. MCCONKEY:

This is in reference to NY F82445, issued to you on February 22, 2000, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of IB-367. We have reviewed the decision in NY F82445 and have determined that the classification set forth in that ruling for IB-367 is in error. This ruling revokes NY F82445.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY F82445 was published on September 27, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 39. One comment was received

in response to this notice.

Facts:

IB-367 is a synthetic drug derived from Protegrins, a family of naturally occurring mammalian peptides. Protegrins contain 16 to 18 amino acids and were originally purified from porcine leukocytes. Like the naturally occurring mammalian peptides, IB-367 exhibits broad-spectrum antimicrobial activity against gram-positive and gram-negative bacteria, and *Candida albicans*. It is imported in bulk as a white to off-white powder for further formulation into Protegin IB-367 Rinse, a pharmaceutical product used in the treatment of oral mucositis, a condition characterized by painful mouth ulcers that form as a side effect of cancer therapies. Protegin IB-367 Rinse completed Phase II Food and Drug Administration (FDA) clinical trials in August of 1999.

IB-367 is a cyclic polypeptide with the molecular formula $C_{78}H_{126}N_{30}O_{18}S_4 \bullet x\ HCl \bullet y\ H_2O$, and the chemical name L-Arginamide, L-arginylglycylglycyl-L-leucyl-L-cysteinyl-L-tyrosyl-L-cysteinyl-L-arginylglycyl-L-arginyl-L-phenylalanyl-L-cysteinyl-L-valyl-L-cysteinyl-L-valyglycyl-, cyclic (5→14), (7→12)-bis (disulfide), hydrochloride, hydrate (9CI). IB-367 has been assigned CAS registry # 244015-05-02 and is not listed in the Chemical Appendix or the Pharmaceutical Appendix to the Tariff Schedule.

Issue:

Whether IB-367 is classified in subheading 2941.90.30, HTSUS, as "Antibiotics: Other: Other: Aromatic or modified aromatic," or in subheading 2934.90.30, HTSUS, as " . . . other heterocyclic compounds: Other: Drugs."

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUSA. *See*, T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

Chapter 29 of the HTSUS, with exceptions inapplicable here, provides only for "[s]eparate chemically defined organic compounds, whether or not containing impurities." Note 1(a), Chapter 29, HTSUS. Hence, the instant merchandise, an unmixed compound, imported in bulk for incorporation within pharmaceutical or other products, is appropriately classified in Chapter 29, HTSUS. The following headings in Chapter 29, HTSUS, are relevant to the classification of this product:

2934: Nucleic acids and their salts; other heterocyclic compounds:

2934.90 Other [than compounds containing an unfused thiazole ring (whether or not hydrogenated) in the structure: Compounds containing a benzothiazole ring-system (whether or not hydrogenated), not further fused: Compounds containing a phenothiazine ring-system (whether or not hydrogenated), not further fused]

Other: [than Aromatic or modified aromatic]

2934.90.30 Drugs

* * * * *

2941 Antibiotics:

2941.90 Other: [than Ampicillin and its salts Penicillin G salts; Carfecillin, sodium; Cloxacillin, sodium; Dicloxacillin, sodium; Flucloxacillin (Floxacillin); and Oxacillin, sodium; Streptomycins and their derivatives; salts thereof: Dihydrostreptomycin and its derivatives; salts thereof Tetracyclines and their derivatives; salts thereof; Chloramphenicol and its derivatives; salts thereof; Erythromycin and its derivatives]

Other: [than Natural antibiotics]

2941.90.30 Aromatic or modified aromatic

EN 29.41 states in pertinent part, as follows:

Antibiotics are substances secreted by living micro-organisms which have the effect of killing other micro-organisms or inhibiting their growth. They are used principally for their powerful inhibitory effect on pathogenic micro-organisms, particularly bacteria or fungi, or in some cases on neoplasms. They can be effective at a concentration of a few micrograms per ml in the blood.

Antibiotics may consist of a single substance or a group of related substances, their chemical structure may or may not be known or be chemically defined. They are chemically diverse and include the following:

* * * * *

(6)Polypeptides, *e.g.*, actinomycins, bacitracin, gramicidins, tyrocidin.

This heading also includes chemically modified antibiotics used as such. These may be prepared by isolating ingredients produced by natural growth of the micro-organism and then modifying the structure by chemical reaction or by adding sidechain precursors to the growth-medium so that desired groups are incorporated into the molecule by the cell-processes (semi-synthetic penicillins); or by bio-synthesis (*e.g.*, penicillins from selected amino-acids).

Natural antibiotics reproduced by synthesis (*e.g.*, chloramphenicol) are classified in this heading, as are certain synthetic products closely related to natural antibiotics and used as such (*e.g.*, thiamphenicol).

In NY F82445, this merchandise was classified in subheading 2941.90.30, HTSUS. However, IB-367 was originally synthesized from porcine leukocytes, not from a living micro-organism. Hence, while IB-367 is a synthetic product used as an antibiotic, it is not "closely related to natural antibiotics," in the sense that it is not originally secreted by living micro-organisms. Rather, IB-367 is an "other heterocyclic compound" classified within subheading 2934.90

The commenter quotes "such key reference works as *Zinsser's Microbiology*, and the *Oxford English Dictionary*" which "define 'antibiotic' in the wider sense as a chemical compound derived from a *living organism* (not just a micro-organism) that is capable of inhibiting or killing micro-organisms." (commentator submission, p.2). Zinsser is copyrighted in 1968 and the Oxford English Dictionary (OED) second edition in 1989. Since the ENs were issued in 1989, we presume the commenter's proffered definition was rejected by the drafters of the ENs, which clearly state that antibiotics are substances secreted by "living *micro*-organisms." Also, it is not clear that the Zinsser and OED definitions refer to leukocytes as

"living organisms." An organism is defined as "a plant or animal." Webster's II New College Dictionary, 772 (Houghton Mifflin Company, 1999). Protegrins are not derived from an animal *per se*. They are derived from the white cells in the animal's blood.

The commenter also submits numerous articles on the development of protegrin based antimicrobial substances. We note a structural difference between the protegrin substances and antibiotics of heading 2941, HTSUS. Protegrins contain disulfide bridges between cystein pairs and the polypeptide antibiotics of heading 2941, HTSUS, do not. The commenter argues that these bridges are not necessary to the antimicrobial activity exhibited by protegrins. This statement is irrelevant to the classification decision. In fact, the structure of the substance is distinctly different from substances classified in heading 2941, HTSUS.

For the reasons listed above, we cannot ignore the EN. Specifically, we believe that the language "closely related to natural antibiotics" must mean in a way other than by the function when followed by the phrase "and used as such." If both phrases referred to the way antibiotics are used, *i.e.*, as antibacterials, antifungals, *etc.*, then one of the phrases would be redundant. As shown above, IB-367 is neither closely related to natural antibiotics in its structure nor in its derivation.

In "Guidance Concerning the Tariff Classification of Pharmaceutical Products Imported for Clinical Research," May 24, 2000, CUSTOMS BULLETIN, Vol. 34, No. 21, Customs announced its intention to classify separate chemically defined organic compounds imported in bulk, for use in Phase II or III FDA clinical trials, in the "drug" provisions of Chapter 29.

At the time NY F82445 was issued, IB-367 was used in the latter phases of FDA mandated clinical trials. Hence, the proper classification for this substance is subheading 2934.90.30, HTSUS, the provision for "Nucleic acids and their salts; other heterocyclic compounds: Other: Drugs."

Holding:

IB-367 is classified in subheading 2934.90.30, HTSUS, the provision for "Nucleic acids and their salts; other heterocyclic compounds: Other: Drugs."

Effect on Other Rulings:

NY F82445, dated February 22, 2000, is revoked.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

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19 CFR Part 177

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF COVERS FOR JUNCTION BOXES AND RELAY BOXES

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of covers for junction boxes and relay boxes.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of covers for junction box and relay housings, and any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed revocation was published on May 24, 2000, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 22, 2001.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to Customs obligations, a notice was published on May 24, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 21, proposing to revoke NY E86526, dated September 2, 1999, which classified covers for junction box housings and relay box housings in subheading 8708.29.50, HTSUS. No comments were received in response to this notice. It is now evident, however, that these covers are for finished junction boxes and relay boxes, each complete with electricals.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifi-

cally identified. Any party who has received an interpretative ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY E86526 to reflect the proper classification of the covers for junction boxes and relay boxes in subheading 8538.90.60, HTSUS, as molded parts suitable for use solely or principally with the apparatus of heading 8535, 8536 or 8537, pursuant to the analysis in HQ 963269. This decision is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: June 27, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

June 27, 2000
CLA-2 RR:CR:GC 963269 JAS
Category: Classification
Tariff No.: 8538.90.60

MS. IKUE STOEHR:
TOYOTA MOTOR SALES, U.S.A., INC.
19001 South Western Avenue
Torrance, CA 90509-2991

Re: NY E86526 Revoked; Molded Plastic Covers for Junction Boxes and Relay Boxes.

DEAR MS. STOEHR:

In NY E86526, which the Director of Customs National Commodity Specialist Division, New York, issued to your company on September 2, 1999, articles referred to as covers for junction box housings and relay housings were found to be classifiable as other parts and accessories of motor vehicle bodies, in subheading 8708.29.50, Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY E86526 was published on May 24, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 21. No comments were received in response to that notice. However, you have since clarified the fact that these covers are for finished junction boxes and relay boxes, each complete with electricals.

Facts:

The articles at issue are of molded plastic and constitute the top half portion (designated part #82672-06060) of a junction box, and the top half portion (designated part #82661-02020) of a relay box. Junction boxes constitute apparatus for making connections to or in electrical circuits while relay boxes constitute apparatus for switching electrical circuits. Junction boxes and relays are attached by brackets to the inside of the engine compartment of a motor vehicle.

The HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other
*	* * *
8538	Parts suitable for use solely or principally with the apparatus of heading 8535, 8536 or 8537:
8538.90	Other:
8538.90.60	Molded parts
*	* * *
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies:
8708.29.50	Other

Issue:

Whether the molded plastic covers for junction boxes and relay boxes are articles of plastics or parts of junction boxes and relays.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. Though not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System. Customs believes the ENs should always be consulted. *See* T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Subject to certain exceptions that are not relevant here, goods that are identifiable as parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Section XVI, Note 2, HTSUS. *See Nidec Corporation v. United States*, 861 F. Supp. 136, *aff'd.* 68 F. 3d 1333 (1995). Parts which are goods included in any of the headings of Chapters 84 and 85 are in all cases to be classified in their respective headings. *See* Note 2(a). Other parts, if suitable for use solely or principally with a particular machine, or with a number of machines of the same heading, are to be classified with the machines of that kind. *See* Note 2(b). All other parts are to be classified in heading 8538, among others, as appropriate. *See* Note 2(c).

Relays are a type of apparatus for switching electrical circuits. They are electrical devices by means of which the circuit is automatically controlled by a change in the same or another circuit. Relays for a voltage not exceeding 1,000 volts are provided for in heading 8536, HTSUS. Junction boxes are a type of apparatus for making connections to or in electrical circuits. They consist of boxes fitted internally with terminals or other devices for connecting together electrical wires. Junction boxes for a voltage exceeding 1,000 volts are provided for in heading 8535, HTSUS, while those for a voltage not exceeding 1,000 volts are provided for in heading 8536.

Under the authority of Section XVI, Note 2(b), HTSUS, plastic covers which are parts suitable for use solely or principally with boxes containing relays of heading 8536 are provided for in heading 8538, HTSUS. Under Section XVI, Note 2(c), HTSUS, plastic covers which are parts of junction boxes of headings 8535 and 8536, but for which no principal use can be determined, are likewise provided for in heading 8538.

Holding:

Under the authority of GRI 1 and Section XVI, Note 2, HTSUS, molded plastic covers for junction boxes and relay boxes, parts #82672-06060 and #82661-02020, respectively, are provided for in heading 8538. They are classifiable in subheading 8538.90.60, HTSUS.

Effect on Other Rulings:

NY E86526, dated September 2, 1999, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

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